

□ 1600

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HUDSON) at 4 p.m.

HOUR OF MEETING ON TOMORROW

Mr. SHIMKUS. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 10 a.m. tomorrow.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

IMPROVING COAL COMBUSTION RESIDUALS REGULATION ACT OF 2015

GENERAL LEAVE

Mr. SHIMKUS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the bill, H.R. 1734.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 369 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 1734.

The Chair appoints the gentleman from Illinois (Mr. HULTGREN) to preside over the Committee of the Whole.

□ 1602

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 1734) to amend subtitle D of the Solid Waste Disposal Act to encourage recovery and beneficial use of coal combustion residuals and establish requirements for the proper management and disposal of coal combustion residuals that are protective of human health and the environment, with Mr. HULTGREN in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Illinois (Mr. SHIMKUS) and the gentleman from New Jersey (Mr. PALLONE) each will control 30 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. SHIMKUS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in December of last year, EPA put out its final rule for coal ash. We applaud EPA's decision to regulate coal ash under subtitle D, confirming what we have been saying all along, that coal ash is not hazardous.

All you have to do is talk to any of the thousands of coal ash recyclers across the country, and they will tell

you that not only is coal ash not hazardous, it is an essential component in their product. However, the rule remains seriously flawed; and implementation will result in confusion, conflict, and a lot of needless litigation.

A fundamental flaw with the rule is that it is self-implementing, which means that, now that EPA has finalized the rule, going forward, there will be zero regulatory oversight of coal ash by the EPA. What this means is that all of the requirements in the final rule, no matter how protective you believe they are, will be interpreted and implemented by the utilities with no oversight or enforcement by the EPA or the States.

This leads us to one of the other key flaws with the final rule, which is that it is enforceable only through citizen suits. Think about that; the final rule sets out a complex set of technical requirements for coal ash, but interpreting what they mean and how to implement them is left entirely to the regulated community with citizen lawsuits in Federal Court as the only mechanism for enforcement.

This will result in an unpredictable array of regulatory interpretations as judges throughout the country are forced to make technical compliance decisions that are better left to a regulatory agency.

Under current law, State permit programs will not operate in lieu of the final coal ash rule. Even if States adopt the final rule, regulated entities must comply with the requirements in the Federal rule and their State. This means, even if a utility was in full compliance with their State coal ash permit, they could and would be sued for noncompliance with the Federal rule.

The Western Governors' Association said it best in a letter to the House and Senate leadership on May 15 of this year:

Unfortunately, EPA's final rule produces an unintended regulatory consequence in that it creates a dual Federal and State regulatory system. This is because EPA is not allowed under RCRA subtitle D to delegate the CCR program to States in lieu of the Federal program.

Also, the rule does not require facilities to obtain permits, does not require States to adopt and implement new rules, and cannot be enforced by EPA. The rule's only compliance mechanism is for a State or citizen group to bring a citizen suit in Federal District Court under RCRA section 7002. This approach marginalizes the role of State regulation, oversight, and enforcement.

This brings us to where we are today, in need of legislative solution to address the fundamental flaws with the final rule. H.R. 1734 is the solution. The bill addresses the self-implementing aspect of the final rule, as well as the problem with citizen suit enforcement, by establishing enforceable permit programs that directly incorporate the technical requirements of the final rule.

The bill will ensure that every State has a coal ash permit program, that

every permit program will contain all of the minimal Federal standards or something more stringent, and that the technical requirements of EPA's final rule are implemented with direct regulatory oversight and enforcement.

The bill requires owners and operators to take actions such as preparing a fugitive dust control plan and conducting structural stability inspections within 8 months from the date of enactment, which makes compliance with these and other requirements directly in line with the timeframe for compliance under the final rule.

Notably, H.R. 1734 also requires owners and operators to begin groundwater monitoring within 36 months from the date of enactment with State environmental agencies immediately ensuring compliance, rather than having to wait for the courts.

It treats inactive surface impoundments in exactly the same manner as the final rule; applies all of the location restrictions from the final rule to the new surface impoundments and expansions of existing impoundments; and will ensure all relevant information—including all information associated with the issuance of permits, all groundwater monitoring data, structural stability assessments, emergency action plans, fugitive dust control plans, information regarding corrective action remedies, and certifications regarding closure—be made available on the Internet.

H.R. 1734 expressly protects the ability to file citizen suits under RCRA while ensuring parties to a lawsuit demonstrate actual harm from the coal ash and not just that a utility allegedly violated the requirements of the rule.

Some say that the bill "goes too far" because it allows States to exercise flexibility and make site-specific, risk-based decisions. Others say that the bill is a "giveaway" to the utilities or that allowing the States to exercise the same flexibility available under other RCRA permit programs "weakens" the requirement of the final rule.

To that, we say H.R. 1734 simply gives the States the same authority to implement coal ash permit programs that they have for other RCRA subtitle D and even subtitle C permit programs.

We trust the States are in the best position to analyze the local conditions and make risk-based permit decisions. We also know EPA trusts the States because EPA relies on the States for the implementation and enforcement of RCRA.

As we have heard before from the Environmental Council of the States and the Association of State and Territorial Solid Waste Management Officials and from the States themselves, they welcome the new minimum Federal requirements, are up to the task of regulating coal ash, and strongly support H.R. 1734.

In addition to ECOS and ASTSWMO, H.R. 1734 enjoys support from a wide array of stakeholders, including Utility